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APPLICATION NO.	FI	LING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO	
09/393,966	09/393,966 09/10/1999		SEIJI TAKEUCHI	35.G2449	3549	
5514	7590	10/16/2003	•	EXAMINER		
FITZPATR 30 ROCKEF		LA HARPER & S LAZA	ROBINSON, MARK A			
NEW YORK, NY 10112				ART UNIT	PAPER NUMBER	
			•	2872		

DATE MAILED: 10/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).  Status  1) Responsive to communication(s) filed on 28 July 2003.  2a) This action is FINAL.  2b) This action is non-final.  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.		· • · · · · · · · · · · · · · · · · · ·		
Examiner  Art Unit  Art U		Application No.	Applicant(s)	U
Mark A. Robinson  - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ③ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Examinated from may be a resiliable under the precisions of TCR 1.136(a). In no event, horsever, may a reply be limitly filed  Examinated for may be a preliable and the precisions of TCR 1.136(a). In no event, horsever, may a reply be limitly filed  Examinated for may be a preliable and the file of the precisions of TCR 1.136(a). In no event, horsever, may a reply be limitly filed  Examinated for may be a preliable and the file of the precisions of the file	Office Action Commence	09/393,966	09/393,966 TAKEUCHI ET AL.	
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Repty  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions client any be a variation used for provisions of 3 CFR 1.15(a). In no evert, however, may a reply be timely filled  If the period for reply sepolified above is less than thiny (30) ears, a reply within the satulatory minimum of thiny (30) slays will be considered limely.  If the period for reply sepolified above is less than thiny (30) ears, a reply within the satulation of the period of the communication.  Fallure to reply volation the set or extended period for reply will, by datable, caused the application to become ASANCONED (30 LS. C. § 130).  Responsive to communication(s) filed on 28 July 2003.  20 This action is FINAL.  20 This action is FINAL.  20 This action is FINAL.  20 This action is period to the production of the controllation of the controllation of Cialms  4) Claim(s) 71.73-75 and 77-88 is/are pending in the application.  4) Claim(s) 71.73-75 and 77-88 is/are rejected.  7) Claim(s) Is/are allowed.  6) Claim(s) Is/are allowed.  6) Claim(s) Is/are abjected to.  8) Claim(s) Is/are abjected to.  8) Claim(s) Is/are abjected to.  9) The specification is objected to by the Examiner.  Application Papers  9) The specification is objected to by the Examiner.  10) The drawing(s) filed on	Office Action Summary	Examiner	Art Unit	
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THE MAILING DATE OF THIS COMMUNICATION.  Edensions of time may be available under the provisions of 32 FR 1.136(a). In no event, however, may a reply be limbly filed after SIX (6) MONTHS from the mailing date of this communication.  If the protect one systems of the provision is set than the Vicio days, a reply within the studory minimum of this (8) days will be considered timely.  Falue to reply within the set or extended point of crapty will, by stability, cause the application to become ABANDONED (35 U.S. § 133).  Any reply received by the Office and that the three mining date of this communication, even if timely filed, may reduce any searched plant time and provided by the Office and that the three mining date of this communication, even if timely filed, may reduce any searched plant time adjustment. See 37 CFR 1.79(b).  Status  1) Responsive to communication(s) filed on 28 July 2003.  2a) This action is FINAL.  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parta Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 71.73-75 and 77-88 is/are pelected.  5) Claim(s) is/are allowed.  6) Claim(s) 1/3-75 and 77-88 is/are rejected.  7) Claim(s) is/are objected to by the Examiner.  4) Claim(s) are subject to restriction and/or election requirement.  Application Papers  9) The specification is objected to by the Examiner.  Application Papers  9) The proposed drawing correction filed on is accepted or by objected to by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  2) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 119 (to a provisional application).  1) Acknowledgment is made of a cla	The MAILING DATE of this communication ap Period for Reply	pears on the cover sheet w	vith the correspondence addr	ess
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#### DETAILED ACTION

## Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 2. Claims 71,82 and 83 are rejected under 35 U.S.C. 102(b) as being anticipated by Sawicki et al 5648874.

These claims stand rejected as discussed in the previous office action, with Sawicki disclosing "an alignment mark" (e.g. note fig. 15A-F or 16A-F, etc.).

### Claim Rejections - 35 USC § 103

- 3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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4. Claims 73-75,77-81 and 84-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawicki.

The limitations of these claims are either met by or obvious over Sawicki for the reasons given both above and in the previous office action.

### Response to Arguments

5. Applicant's arguments filed 7/28/03 have been fully considered but they are not persuasive.

Applicant has argued that Sawicki does not show an alignment mark as recited in the claims.

However, as noted above, Sawicki does in fact show a reference or alignment mark in, for example, figs. 15 or 16 (note the portions on the left side of the layer which have been removed to form a mark). Figure 13(C) is also noted as showing an alignment mark. Accordingly, the feature in question upon which applicant's arguments are based is seen to be met by the reference.

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#### Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Harden et al show a diffraction element including an alignment mark(18).

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Robinson whose telephone number is (703) 305-3506.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn, can be

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reached at (703) 305-0024. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

MR

10/7/03

MARX A. ROSINSON PRIMARY EXAMINER